

TRANSLATION

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

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| Applicant's or agent's file reference R 44288 | FOR FURTHER ACTION | See Form PCT/IPEA/416 |
| International application No. PCT/AT2004/000366 | International filing date (<i>day/month/year</i>) 22.10.2004 | Priority date (<i>day/month/year</i>) 23.10.2003 |
| International Patent Classification (IPC) or national classification and IPC A61J9/04, A61J11/00 | | |
| Applicant BAMED AG | | |

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| 1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36. |
| 2. This REPORT consists of a total of <u>11</u> sheets, including this cover sheet. |
| 3. This report is also accompanied by ANNEXES, comprising: a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of _____ sheets, as follows: <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions). |
| 4. This report contains indications relating to the following items: <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input checked="" type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input checked="" type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application |

| | |
|---|-----------------------------------|
| Date of submission of the demand | Date of completion of this report |
| Name and mailing address of the IPEA/EP | Authorized officer |
| Facsimile No. | Telephone No. |

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/AT2004/000366

Box No. I

Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-13 _____ as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. 1-31 _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* _____ received by this Authority on _____
- nos.* _____ received by this Authority on _____
- ☒ the drawings:
- sheets 1/4-4/4 _____ as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/AT2004/000366

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application

☒ claims Nos. 13-28

because:

☐ the said international application, or the said claims Nos. _____
relate to the following subject matter which does not require an international preliminary examination (*specify*):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____
are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. _____ are so inadequately supported
by the description that no meaningful opinion could be formed.

☒ no international search report has been established for said claims Nos. 13-28

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐ has not been furnished

☐ does not comply with the standard

the computer readable form

☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ See Supplemental Box for further details.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/AT2004/000366

Box No. IV

Lack of unity of invention

1. ☒ In response to the invitation to restrict or pay additional fees the applicant has:
- ☐ restricted the claims.
- ☐ paid additional fees.
- ☐ paid additional fees under protest.
- ☒ neither restricted the claims nor paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is:
- ☐ complied with.
- ☒ not complied with for the following reasons:
- 1 This report makes reference to the following documents:
- D1: FR-A-2 640 875 (DUFORT MAURICE) 29 June 1990 (1990-06-29)
- D2: EP-A-1 310 230 (PIGEON CORP) 14 May 2003 (2003-05-14)
- D3: US-A-6 142 325 (CHOMIK RICHARD S) 7 November 2000 (2000-11-07)
- D4: US 2002/108925 A1 (MIHASHI HIROKAZU) 15 August 2002 (2002-08-15)
- D5: DE 202 09 899 U (NOVATEX GMBH) 5 September 2002 (2002-09-05)
- D6: DE 7 04 733 U SCHMIDT DIETER 3 September 1987 1987-09-03
- 2 The International Searching Authority has determined that this international application contains multiple (groups of) inventions that are not linked by a single, general inventive idea (PCT Rule 13.1), namely:
- I: Claims 1-3, 4-12, 29-31
- Bottle with a base cap having an air intake valve and a diaphragm.
- II: Claims 1-3, 13-28
- Bottle with teat.
4. Consequently, this report has been established in respect of the following parts of the international application:
- ☐ all parts.
- ☒ the parts relating to claims Nos. 1-12, 29-31

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/AT2004/000366

| Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement | | |
|---|---|--------------------|-----|
| 1. Statement | | | |
| Novelty (N) | Claims | <u>1-12, 29-31</u> | YES |
| | Claims | <u></u> | NO |
| Inventive step (IS) | Claims | <u></u> | YES |
| | Claims | <u>1-12, 29-31</u> | NO |
| Industrial applicability (IA) | Claims | <u>1-12, 29-31</u> | YES |
| | Claims | <u></u> | NO |
| 2. Citations and explanations (Rule 70.7) | | | |
| 3 | The present application does not meet the requirements of PCT Article 33(1). | | |
| 3.1 | <p>D1, which is regarded as the closest prior art, discloses (cf. page 6, figures 1-3) a baby bottle having a jacket (2) open on both sides, a base cap (16) having an air intake valve (8) being fixed in one base end area of the bottle jacket (2) and a teat (10) being fixed on an opposite teat end area, said teat having a shaft and a nipple (23) connected thereto via a lip contact area, the bottle jacket (2) having a substantially conical shape that widens from the teat end area to the base end area (6).</p> <p>As can be determined from figure 1 of the present application, bottle jacket shapes that have a conical widening that connects to the bottle neck and, adjacent thereto, a cylindrical form, also come under the scope of the expression "in a substantially conical shape". Such a shape is, however, indeed</p> | | |

| Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
|-----------|---|
| | <p>shown in D1.</p> <p>Therefore, the subject matter of claim 1 differs from the prior art according to D1 by the fact that the shaft of the teat has a wall thickness greater than the wall thickness of the lip contact area and of the nipple.</p> <p>D2 discloses a teat which, as can be determined from figures 5 and 6, has a wall thickness in the shaft area below (211c) the lip contact area that is greater than the wall thickness in the lip contact area itself and of the nipple above (212c) the lip contact area.</p> <p>Therefore, the feature "different wall thickness" is a standard design measure used to facilitate sucking (see D2, paragraphs 15 and 60, figures 5 and 6). Consequently, the subject matter of claim 1 does not involve an inventive step within the meaning of PCT Article 33(3).</p> <p>If, furthermore, the expression "in a substantially conical shape" is indeed meant to be interpreted as a conical shape, reference should be made to D6, since figure 1 discloses a bottle with this type of conical shape. Moreover, this figure does not show any teat, but it is immediately clear to</p> |

| Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
|-----------|--|
| | <p>a person skilled in the art that this bottle also has to have a teat since it is claimed as a baby bottle. Therefore, the subject matter of claim 1 would likewise fail to involve an inventive step in view of the combination of documents D6 and D2.</p> <p>Both D1 and D6 show the caps claimed in claims 2 and 3, and therefore the combination of these claim features cannot be regarded as involving an inventive step, either.</p> <p>3.2 The subject matter of claim 29 does not involve an inventive step within the meaning of PCT Article 33(3).</p> <p>D3, which is regarded as the closest prior art, discloses (cf. column 5, lines 34-47) a method from which the subject matter of claim 29 differs in that the bottle jacket has a substantially conical shape.</p> <p>The shape of the bottle jacket depends only on the injection mold. D4 discloses an injection mold having a conical shape that is suitable for producing substantially conical bottle jackets.</p> <p>Although D3 does not expressly disclose the method for producing the bottle, a person skilled in the art knows that various known production methods such as injection or blow</p> |

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/AT2004/000366

| Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
|-----------|---|
| | <p>molding can be used for such plastic bottles that are open on both sides. The use of known measures cannot be regarded as inventive.</p> <p>3.3 The known claims 2 to 12 and 30 and 31 contain no features that, in combination with the features of any claim to which they refer, meet the PCT requirements for inventive step. See, for example:</p> <p>D1, page 6, figures 1-3, for claims 2 to 12</p> <p>D4, paragraph 30, figures 2 and 3, for claim 30</p> <p>D3, column 5, lines 34-47, for claim 31</p> |

Box No. VII **Certain defects in the international application**

The following defects in the form or contents of the international application have been noted:

- 4 The technical features in claim 4 are already disclosed in claim 1 (lines 3 and 4) and claim 2.
- 5 The expression "...*substantially conical*..." used in claim 1 is vague and unclear and leaves the reader uncertain as to the meaning of the technical feature in question. As a result, the definition of the subject matter of this claim lacks clarity (PCT Article 6). Based on the description (page 3, lines 23-27) and figure 1, this expression is understood to mean a bottle jacket having a large base end area as compared to the teat end area. Documents D1, D5 and D6 all disclose this feature.

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of:

Box IV

The reasons therefor are the following:

According to PCT Rule 6.4, multiple dependent claims shall not serve as a basis for any other multiple dependent claims. Therefore, in the present application, groups I and II were identified based on the technical features of the corresponding claims.

The search resulted in the following prior art relevant to the assessment of unity of invention:

D1: FR-A-2 640 875 (DUFORT MAURICE) 29 June 1990
(1990-06-29)

D2: EP-A-1 310 230 (PIGEON CORP) 14 May 2003 (2003-05-14)

As stated in Box V, the subject matter of claims 1 to 3 does not involve an inventive step.

Consequently, only the following claims, which are dependent on claim 3, remain with their possibly special technical features (PCT Rule 13.2):

Group I:

Claim 4: a base cap with an air intake valve screwed on to the base end area (Problem: how to clean the baby bottle in a simple manner)

Supplemental Box

Group II:

Claim 13: a nipple with different wall thicknesses
(2.00 mm - 2.50 mm and 1.20 mm - 1.50 mm) (Problem:
how to simulate a natural mother's breast)

The above-mentioned groups and special technical
features differ from each other to such an extent
that there does not appear to be any technical
relationship or technical interrelationship that
results in a single general inventive concept.
Therefore, pursuant to PCT Rule 13.2, the subject
matter of groups I and II lack unity of invention.